

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BARBARA ANN GAMBLE :
v. : CIVIL NO. 3:02CV491 (AHN)
E-CREDIT SOLUTIONS, INC. :

RULING AND ORDER

The plaintiff, Barbara Ann Gamble ("Gamble") brings this action pro se and in forma pauperis against E-Credit Solutions, Inc. ("E-Credit") alleging fraud, breach of contract, and violation of the right to privacy and confidentiality all in connection with the defendant's offer of pre-approved credit. She seeks punitive damages and injunctive relief. The court concludes, sua sponte, that because Gamble's claims are all based on state statutory or common law and the complaint does not state a basis for this court's subject matter jurisdiction, dismissal is mandated by 28 U.S.C. § 1915(e)(2)(B).

BACKGROUND

Since January 7, 2002, Gamble has filed thirty-four actions in this Court. On March 20, 2002, she was granted leave pursuant to 28 U.S.C. § 1915(a) to proceed in forma pauperis in this action. E-Credit has never been served. Gamble is a citizen of Connecticut. E-Credit is alleged to be a citizen of Florida. Gamble does not allege any actual

damages. She seeks an unspecified amount of punitive damages and a credit card with a \$4,000.00 limit, as advertised by E-Credit. The complaint does not contain any jurisdictional allegations.

It can be construed from the few factual allegation in the complaint that E-Credit used a direct mail advertisement to induce Gamble to call E-Credit to obtain a credit card. Gamble attached the advertisement, entitled "Credit Approval Notification" to the complaint. The "Credit Approval Notification" states: "We are notifying you that your Credit Card has not been activated. Our records show this card to have an approved line of credit of \$4,000.00." The small print on the bottom of the card states: "Must have a current checking or savings account and be at least 18 years of age. This special offer may be withdrawn at anytime without notice."

Discussion

Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . [or] fails to state a claim on which relief may be granted" 28 U.S.C.A § 1915(e)(2)(B)(West Group 2003). An action is frivolous and may be dismissed when (1) the "factual contentions are clearly baseless," or (2) the claim is "based

on an indisputably meritless legal theory." Nance v. Kelly, 912 F.2d 605, 605 (2d Cir. 1990) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

The court "construe[s] pro se complaints liberally and [applies] a more flexible standard in determining the sufficiency of a pro se complaint than [it] would in reviewing a pleading submitted by counsel." Platsky v. C.I.A., 953 F.2d 26, 28 (2d Cir. 1991). However, even liberally construing the complaint in this action, there are no allegations that implicate the court's subject matter jurisdiction under any federal statute or diversity of citizenship.

Gamble does not allege that E-Credit obtained information about her through a credit report. To the contrary, Gamble alleges that she volunteered the information in an effort to obtain a credit card. Thus, unlike Gamble's previous action against Citifinancial, she does not allege a possible claim under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 (2002). See Gamble v. Citifinancial & Landers, No. 3:02 CV 693, slip op. at 5 (D. Conn. Nov. 19, 2002) (finding sufficient jurisdictional allegations where the complaint contained claims of unauthorized use of a credit report in violation of the FCRA). Thus, unlike Citifinancial, there is no basis in this action for subject matter jurisdiction under the FCRA.

The court also does not have diversity jurisdiction in this case. Although the complaint alleges complete diversity of citizenship between the parties, the amount in controversy does not exceed \$75,000 as required by 28 U.S.C. § 1332. Accordingly, the complaint does not contain sufficient allegations to implicate jurisdiction on the basis of diversity of citizenship.

Nonetheless, because the court cannot "rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," Gamble will be afforded an opportunity to file an amended complaint alleging an adequate jurisdictional basis. See Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000) (quoting Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999)). If the plaintiff intends to file such an amended complaint, she shall do so within twenty days from the date of this order. Failure to do so will cause this action to be dismissed with prejudice.

Gamble is admonished that further filing of frivolous lawsuits in this Court may result in the imposition of sanctions. Such a measure is appropriately applied to litigants, such as Gamble, who have a "clear pattern of abusing the litigation process by filing vexatious and frivolous complaints." See In re Sassower, 20 F.3d 42, 44 (2d Cir. Jud.

Council 1994).

CONCLUSION

For the reasons set out above, Gamble's complaint [Doc. #3] is DISMISSED without prejudice, with leave to file an amended complaint within twenty (20) days of the date of this order. It is certified that any appeal in forma pauperis from this order would not be taken in good faith within the meaning of 28 U.S.C. § 1925(a).

SO ORDERED this day of March, 2003, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge